FITAPELLI & SCHAFFER, LLP
Joseph A. Fitapelli (JAF 9058)
Brian S. Schaffer (BSS 7548)
Eric J. Gitig (EG 7399)
475 Park Avenue South, 12th Floor
New York, New York 10016
Telephone: (212) 300-0375

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CASHIERS

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

VLADISLAV BARANEKO and ARATI MAHAJAN, on behalf of themselves and all others similarly situated,

Plaintiffs,

-against-

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED, MERRILL LYNCH & CO., INC., and BANK OF AMERICA CORPORATION,

Defendants.

COLLECTIVE ACTION COMPLAINT

Plaintiffs Vladislav Baraneko and Arati Mahajan (collectively "Plaintiffs"), individually and on behalf of all others similarly situated, by their attorneys, Fitapelli & Schaffer, LLP, upon personal knowledge as to themselves and upon information and belief as to other matters, allege as follows:

NATURE OF THE ACTION

1. This lawsuit seeks to recover overtime compensation for Plaintiffs and their similarly situated co-workers who have been employed by Merrill Lynch, Pierce, Fenner & Smith Incorporated and Merrill Lynch & Co., Inc. (collectively "Merrill Lynch") and Bank of America (collectively "Defendants") in the United States.

2. Bank of America is one of the largest financial companies in the world, serving clients in more than 150 countries. As of January 1, 2009, Bank of America completed its purchase of Merrill Lynch, creating the largest wealth management business in the world, with approximately 15,000 financial advisors and $2.2 trillion in client assets.

3. Plaintiffs worked for Defendants as Senior Specialists in New York.

4. Senior Specialists are "back office" employees who perform menial tasks, including, but not limited to, entering data into computer programs and pre-approved templates.

5. During the past three years, Defendants have employed hundreds of Senior Specialists, who have performed the same or similar work as Plaintiffs.

6. Prior to in or around late 2009, it was Defendants' nationwide policy to deprive Plaintiffs and their similarly situated co-workers – Senior Specialists – of earned overtime wages. In order to avoid paying its Senior Specialists overtime premiums for the hours they worked in excess of 40 in a workweek, Defendants uniformly misclassified Senior Specialists as exempt from the overtime provisions of the Fair Labor Standards Act ("FLSA"). In or around late 2009, Defendants re-classified the position of Senior Specialist as non-exempt, thus entitling Senior Specialists to their lawfully earned overtime pay.

7. Plaintiffs bring this action on behalf of themselves and similarly situated current and former employees of Defendants who elect to opt-in to this action pursuant to the FLSA, 29 U.S.C. §§ 201 *et seq.*, and specifically, the collective action provision of 29 U.S.C. § 216(b), to remedy violations of the wage-and-hour provisions of the FLSA by Defendants that have deprived Plaintiffs and others similarly situated of their lawfully earned wages.

THE PARTIES

Plaintiffs

Vladislav Baraneko

8. Plaintiff Vladislav Baraneko ("Baraneko") is an adult individual who is a resident of Brooklyn, New York.

9. Baraneko was employed by Defendants as a Senior Specialist from on or about February 20, 2007 to July 3, 2010.

10. Baraneko is a covered employee within the meaning of the FLSA.

11. A written consent form for Baraneko is attached to this Collective Action Complaint.

Arati Mahajan

12. Plaintiff Arati Mahajan ("Mahajan") is an adult individual who is a resident of Jersey City, New Jersey.

13. Mahajan was employed by Defendants as a Senior Specialist from on or about April 16, 2007 to May 2010.

14. Mahajan is a covered employee within the meaning of the FLSA.

15. A written consent form for Mahajan is attached to this Collective Action Complaint.

Defendants

16. Defendants Merrill Lynch, Pierce, Fenner & Smith Incorporated, Merrill Lynch & Co. Inc., and Bank of America (collectively "Defendants") jointly employed Plaintiffs and similarly situated employees at all times relevant. Each Defendant has had substantial control over Plaintiffs' working conditions, and over the unlawful policies and practices alleged herein.

17. During all relevant times, Defendants have been Plaintiff's employers within the meaning of the FLSA and the NYLL.

18. Upon information and belief, Defendants are part of a single integrated enterprise that jointly employed Plaintiffs and similarly situated employees at all times relevant.

19. Upon information and belief, Defendants' operations are interrelated and unified.

20. Upon information and belief, during all relevant times, Defendants have had control over, and the power to change compensation practices that affected Plaintiffs and similarly situated employees.

21. Upon information and belief, Defendants have had the power to determine employee policies that affected Plaintiffs and similarly situated employees, including, but not limited to, time-keeping and payroll policies.

Merrill Lynch, Pierce, Fenner & Smith Incorporated

22. Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLPFS") is a foreign business corporation, organized and existing under the laws of Delaware.

23. Throughout the relevant period, MLPFS employed Plaintiffs and similarly situated employees within the meaning of the FLSA.

24. MLPFS is a covered employer within the meaning of the FLSA and, at all times relevant, employed and/or jointly employed Plaintiffs and similarly situated employees.

25. At all relevant times, MLPFS maintained control, oversight, and direction over Plaintiffs and similarly situated employees, including payroll and other employment practices that applied to them.

26. MLPFS applies the same employment policies, practices, and procedures to all Senior Specialists throughout the United States, including policies, practices, and procedures with respect to payment of overtime compensation.

27. Upon information and belief, at all times relevant, MLPFS's annual gross volume of sales made or business done was not less than $500,000.00.

Merrill Lynch & Co., Inc.

28. Merrill Lynch & Co., Inc. ("ML & Co.") is a foreign business corporation, organized and existing under the laws of Delaware.

29. Throughout the relevant period, ML & Co. employed Plaintiffs and similarly situated employees within the meaning of the FLSA.

30. ML & Co. is a covered employer within the meaning of the FLSA and, at all times relevant, employed and/or jointly employed Plaintiffs and similarly situated employees.

31. At all relevant times, ML & Co. maintained control, oversight, and direction over Plaintiffs and similarly situated employees, including payroll and other employment practices that applied to them.

32. ML & Co. applies the same employment policies, practices, and procedures to all Senior Specialists throughout the United States, including policies, practices, and procedures with respect to payment of overtime compensation.

33. Upon information and belief, at all times relevant, ML & Co.'s annual gross volume of sales made or business done was not less than $500,000.00.

Bank of America

34. Bank of America is a foreign business corporation, organized and existing under the laws of Delaware.

35. Bank of America completed their purchase of Merrill Lynch as of January 1, 2009.

36. As of January 1, 2009, Bank of America employed Plaintiffs and similarly situated employees within the meaning of the FLSA.

37. Bank of America is a covered employer within the meaning of the FLSA, and since January 1, 2009, employed and/or jointly employed Plaintiffs and similarly situated employees.

38. As of January 1, 2009, Bank of America maintained control, oversight, and direction over Plaintiffs and similarly situated employees, including payroll and other employment practices that applied to them.

39. Bank of America applies the same employment policies, practices, and procedures to all Senior Specialists throughout the United States, including policies, practices, and procedures with respect to payment of overtime compensation.

40. Upon information and belief, at all times relevant, Bank of America's annual gross volume of sales made or business done was not less than $500,000.00.

JURISDICTION AND VENUE

41. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1337.

42. This Court also has jurisdiction over Plaintiff's claims under the FLSA pursuant to 29 U.S.C. § 216(b).

43. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims occurred in this district.

COLLECTIVE-WIDE FACTUAL ALLEGATIONS

44. Plaintiffs bring the First Cause of Action, an FLSA claim, on behalf of themselves and all similarly situated persons who work or have worked for Defendants as Senior Specialists in the United States who elect to opt-in to this action (the "FLSA Collective")

45. Consistent with Defendants' policy and pattern or practice, Plaintiff and the FLSA Collective were improperly classified as exempt from the overtime requirements of the FLSA, and regularly worked in excess of 40 hours per work week without being paid premium overtime compensation for all hours worked beyond 40 per workweek.

46. All of the work that Plaintiffs and the FLSA Collective have performed has been assigned by Defendants, and/or Defendants have been aware of all of the work that Plaintiffs and the FLSA Collective have performed.

47. As part of its regular business practice, Defendants have intentionally, willfully, and repeatedly engaged in a pattern, practice, and/or policy of violating the FLSA with respect to Plaintiffs and the FLSA Collective. This policy and pattern or practice includes, but is not limited to:

a. willfully failing to pay its employees, including Plaintiffs and the FLSA Collective, overtime wages for hours that they worked in excess of 40 hours per workweek;

b. willfully classifying Plaintiffs and the FLSA Collective, as exempt from the overtime requirements of the FLSA; and

c. willfully failing to record all of the time that its employees, including Plaintiffs and the FLSA Collective, have worked for the benefit of Defendants.

48. Defendants' unlawful conduct, as described in this Collective Action Complaint, is pursuant to a corporate policy or practice of minimizing labor costs by misclassifying Plaintiffs and the FLSA Collective as exempt from the overtime requirements of the FLSA, and violating the FLSA by failing to pay them overtime premiums for time they worked in excess of 40 hours per workweek.

49. Defendants are aware or should have been aware that federal law required them to pay employees performing non-exempt duties an overtime premium for hours worked in excess of 40 per workweek.

50. Plaintiffs and the FLSA Collective perform or performed the same primary duties.

51. Defendants' unlawful conduct has been widespread, repeated, and consistent.

PLAINTIFF'S FACTUAL ALLEGATIONS

52. Consistent with its policies and patterns or practices as described herein, Defendants harmed Plaintiffs individually as follows:

Vladislav Baraneko

53. From on or about February 20, 2007 to in or around late 2009, Baraneko worked an average of 55 to 70 hours per workweek for Defendants without receiving overtime compensation for any of the hours he worked over 40 in a workweek. On occasion, Baraneko stayed at work until 3:00 AM or later.

54. In or around late 2009, Defendants reclassified Senior Specialists as non-exempt, thus being entitled to overtime pay.

55. From on or about February 20, 2007 to in or around late 2009, Defendants were aware that Baraneko was working well over 40 hours per workweek, yet they failed to pay Baraneko any overtime compensation for any of the hours he worked over 40 in a workweek.

56. Upon information and belief, Defendants did not keep accurate records of hours worked by Baraneko.

57. Baraneko's primary duty was not directly related to Defendants' management or general business operations. Baraneko's primary duty did not include the exercise of discretion and independent judgment regarding matters of significance. In that regard, Baraneko:

a. was not involved in planning Defendants' long or short term business objectives;

b. could not formulate, affect, implement or interpret Defendants' management policies or operating practices;

c. did not carry out major assignments that affected Defendants' business operations;

d. did not have authority to negotiate or commit Defendants financially;

e. could not waive or deviate from Defendants' established policies or procedures without prior approval; and

58. Throughout the duration of his employment with Defendants, Baraneko never earned $100,000.00 or more in a calendar year.

Arati Mahajan

59. From on or about April 16, 2007 to in or around late 2009, Mahajan worked an average of 55 to 70 hours per workweek for Defendants without receiving overtime compensation for any of the hours he worked over 40 in a workweek. On occasion, Mahajan stayed at work until 2:00 AM or later.

60. In or around late 2009, Defendants reclassified Senior Specialists as non-exempt, thus being entitled to overtime pay.

61. From on or about April 16, 2007 to in or around late 2009, Defendants were aware that Mahajan was working well over 40 hours per workweek, yet they failed to pay Mahajan any overtime compensation for any of the hours she worked over 40 in a workweek.

62. Upon information and belief, Defendants did not keep accurate records of hours worked by Mahajan.

63. Mahajan's primary duty was not directly related to Defendants' management or general business operations. Mahajan's primary duty did not include the exercise of discretion and independent judgment regarding matters of significance. In that regard, Mahajan:

a. was not involved in planning Defendants' long or short term business objectives;

b. could not formulate, affect, implement or interpret Defendants' management policies or operating practices;

c. did not carry out major assignments that affected Defendants' business operations;

d. did not have authority to negotiate or commit Defendants financially;

e. could not waive or deviate from Defendants' established policies or procedures without prior approval; and

64. Throughout the duration of her employment with Defendants, Mahajan never earned $100,000.00 or more in a calendar year.

FIRST CAUSE OF ACTION
Fair Labor Standards Act – Overtime Wages
(Brought on behalf of Plaintiffs and the FLSA Collective)

65. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

66. The overtime wage provisions set forth in the FLSA, 29 U.S.C. §§ 201 *et seq.*, and the supporting federal regulations, apply to Defendants, and protect Plaintiffs and the members of the FLSA Collective.

67. Defendants have failed to pay Plaintiffs and the members of the FLSA Collective overtime wages for all hours worked in excess of 40 hours in a workweek.

68. As a result of Defendants' unlawful acts, Plaintiffs and the FLSA Collective have been deprived of overtime compensation and other wages in amounts to be determined at trial, and are entitled to recovery of such amounts, liquidated damages, prejudgment interest, attorneys' fees, costs, and other compensation pursuant to the FLSA.

69. Defendants' unlawful conduct, as described in this Collective Action Complaint, has been willful and intentional. Defendants were aware or should have been aware that the practices described in this Complaint were unlawful. Defendants have not made a good faith effort to comply with the FLSA with respect to the compensation of Plaintiffs and the FLSA Collective.

70. Because Defendants' violations of the FLSA have been willful, a three-year statute of limitations applies, pursuant to 29 U.S.C. § 255.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all other similarly situated persons, seek for the following relief:

A. That, at the earliest possible time, Plaintiffs be allowed to give notice of this collective action, or that the Court issue such notice, to all persons who are presently, or have at any time during the three years immediately preceding the filing of this suit, up through and including the date of this Court's issuance of court-supervised notice, been employed by Defendants as Senior Specialists or similarly situated positions. Such notice shall inform them that this civil action has been filed, of the nature of the action, and of their right to join this lawsuit if they believe they were denied proper wages;

B. Unpaid overtime pay and an additional and equal amount as liquidated damages pursuant to the FLSA and the supporting United States Department of Labor regulations;

C. Reasonable attorneys' fees and costs of the action;

D. Such other relief as this Court shall deem just and proper.

Dated: New York, New York
April 8, 2011

Respectfully submitted,

Brian S. Schaffer (BS 7548)

FITAPELLI & SCHAFFER, LLP
Joseph A. Fitapelli (JF 9058)
Brian S. Schaffer (BS 7548)
Eric J. Gitig (EG 7399)
475 Park Avenue South, 12th Floor
New York, New York 10016
Telephone: (212) 300-0375

Attorneys for Plaintiff and the Putative Class

FAIR LABOR STANDARDS ACT CONSENT

I, consent to be a party plaintiff in a lawsuit against Merrill Lynch and Bank of America and/or related entities and individuals in order to seek redress for violations of Fair Labor Standards Act, pursuant to 29 U.S.C. §216 (b). I hereby designate Fitapelli & Schaffer, LLP to represent me in such a lawsuit.

Signature

VLADISLAV BARANCHENKO

Full Legal Name (Print)

[redacted]

Address

[redacted]

City, State Zip Code

FAIR LABOR STANDARDS ACT CONSENT

I, consent to be a party plaintiff in a lawsuit against Merrill Lynch and Bank of America and/or related entities and individuals in order to seek redress for violations of Fair Labor Standards Act, pursuant to 29 U.S.C. §216 (b). I hereby designate Fitapelli & Schaffer, LLP to represent me in such a lawsuit.

Signature

Arati Mahajan

Full Legal Name (Print)

[redacted]

Address

[redacted]

City, State Zip Code